IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN.APPLICATION NO.449 OF 2004

HUB Narayan Vishwanath Pandey ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr.P.R. Pandey, for the Applicant.

Mr.K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

22nd February 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Saste, A.P.P., waives notice for the Respondent. As short question is involved, application is taken up for final disposal forthwith by consent.

. This application takes exception to the order dated 30th October 2004 passed against the

Applicant, who had executed surety for the accused. By that order, distress warrants in the name of Hub Narayan Vishwanath Pandey in respect of surety bond of Rs.25,000/- for both the accused have been directed. The Applicant is also taking exception to order dated 19th November 2004 in rejecting application, Exhibit 62, filed by the Applicant.

. It is seen from the record that the accused did not remain present on certain dates before the trial Court which necessitated passing of order dated 30th October 2004 against the Applicant. However, subsequently, the accused surrendered before the Court on their own and the trial proceeded further. The trial eventually ended in acquittal of the accused. The Applicant had applied for recall of the order issuing distress warrants against the Applicant, but that application has been rejected essentially on the reasoning that there is no provision, which would permit the Court to recall distress warrants once issued.

. Taking overall view of the matter, as the

accused had later on surrendered before the trial Court on their own and the trial proceeded further ending in acquittal of the said accused, the question of invoking distress warrants against the Applicant for non-appearance of the accused on the relevant dates, in my opinion, will be inappropriate. Accordingly, both the orders dated 30th October 2004 and 19th November 2004 are set aside in the peculiar facts and circumstances of the case. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)